

would depart too far from America's fundamental legal traditions to be immune from serious legal challenges.

So, beginning 3 years ago, I have cosponsored bills that would establish clear statutory authority for detaining enemy combatants and using special tribunals to try them. Unfortunately, neither the president nor the Republican leadership thought there was a need for Congress to act—the president preferred to insist on unilateral assertions of executive authority, and the leadership was content with an indolent abdication of Congressional authority and responsibility.

Then, earlier this year, the Supreme Court put an end to that approach.

In the case of *Hamdan v. Rumsfeld*, the Court ruled that the military commissions set up by the Administration to try enemy combatants lacked constitutional authority in part because their procedures violated basic tenets of military and international law, including that a defendant must be permitted to see and hear evidence against him. Although the Court did not rule that the president is prohibited from establishing military commissions, it did determine that the current system isn't a "regularly constituted court" and doesn't provide judicial guarantees.

We are voting on this bill—on any bill, in fact—only because that *Hamdan* decision forced the Administration to come to Congress, not because President Bush has been in any hurry to try the more than 400 detainees at Guantanamo under sound procedures based on specific legislation.

And we are being forced to vote today—not later, and only on this specific bill, with no opportunity to even consider any changes—because, above all, the Republicans have decided they need to claim a legislative victory when they go home to campaign, to help take voters' minds off the Administration's missteps and their own failure to pass legislation to address the voters' concerns.

In other words, for the Bush Administration and the Republican leadership it's business as usual—ignore a problem as long as possible, then come up with a last-minute proposal developed without any input from Democrats, allow only a "take it or leave it" vote, and then smear anyone who doesn't support it as failing to support our country.

That's been their approach to almost everything of importance, so while it's disappointing it's not surprising that the Administration and the Republican leadership have not approached this important topic more thoughtfully.

The goal, of course, should be to have legislation to help make America safer that can withstand the proper scrutiny of the courts while meeting the needs of the American people and not undermine our ability to have the support of our allies.

The bill originally proposed by the president fell short of meeting those standards. I opposed it because I thought it risked irreparably harming the war on terror by tying up the

prosecution of terrorists with new untested legal norms that did not meet the requirement of the *Hamdan* decision; endangering our service members by attempting to rewrite and limit our compliance with Common Article Three of the Geneva Conventions; undermining basic standards of U.S. law; and departing from a body of law well understood by our troops.

I was not alone in rejecting the bill the president originally proposed. As we all know, several members of the other body, including Senator WARNER, Chairman of the Senate Armed Services Committee, and other members of that committee, including Senators MCCAIN and GRAHAM, also had serious objections to that legislation and, joined by Senator LEVIN, the ranking Democrat on the Committee, developed legislation that struck the important balance between military necessity and basic due process.

When the House Armed Services Committee took up the president's bill, I joined in voting for an alternative, offered by our colleague, Representative SKELTON, the Committee's senior Democratic member, that was identical to that bipartisan Senate legislation.

That alternative would have established tough but fair rules, based on the Uniform Code of Military Justice and its associated regulations, for trying terrorists. This would have fully responded to what the Supreme Court identified as the shortcomings in the previous system. But the Republican leadership insisted on moving forward with the president's bill rather than working in a bipartisan manner, and so that alternative was rejected. As a result, I voted against sending the president's bill to the House floor.

But the bill now before the House is neither the president's bill nor the bipartisan bill approved by the Senate Armed Services Committee. Instead, it is a new measure, just introduced, that differs in many respects and reflects the result of further negotiations involving the White House, several Republican Senators, and the House Republican leadership.

And while this new bill includes some improvements over the president's original bill, it still does not meet the test of deserving enactment, and I cannot support it.

Some of my concerns involve the bill's specific provisions. But just as serious are my concerns about what the bill does not say.

For example, the bill includes provisions intended to bar detainees from challenging their detentions in federal courts by denying those courts jurisdiction to hear an application for a writ of habeas corpus "or any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement" by or on behalf of an alien that the government—that is, the Executive Branch—has determined "to have been properly detained as an enemy combatant or is awaiting such determination."

These provisions, which the bill says are to apply to cases now before the courts, evidently allow indefinite detention, or detention at least until the war on terrorism is "over."

And while the reference to "aliens" seems to mean that this is not to apply to American citizens—who are not immune from being considered "enemy combatants"—some legal experts say it is not completely clear that citizens would really have the ability to challenge their detentions.

I could not support any legislation intended to give the President—any president, of any party—authority to throw an American citizen into prison without what the Supreme Court has described as "a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker," and I prefer to err on the side of caution before voting for a measure that is not more clear than the bill before us on this point.

Also, these sweeping jurisdiction-stripping provisions, as well as other parts of the bill, raise enough legal questions that military lawyers say there is a good chance the Supreme Court will rule it unconstitutional. I do not know if they are right about that, but their views deserve to be taken seriously—not only because we in Congress have sworn to uphold the Constitution but also because if our goal truly is to avoid unnecessary delays in bringing terrorists to justice, we need to take care to craft legislation that can and will operate soon, not only after prolonged legal challenges.

In addition, I am concerned that the bill gives the President the authority to "interpret the meaning and application" of U.S. obligations under the Geneva Conventions. Instead of clearly banning abuse and torture, the bill leaves in question whether or not we are authorizing the Executive Branch to carry out some of the very things the Geneva Conventions seek to ban.

I cannot forget or discount the words of Rear Adm. Bruce MacDonald, the Navy's Judge Advocate General, who told the Armed Services Committee "I go back to the reciprocity issue that we raised earlier, that I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our servicemen or women were taken and held as a detainee."

I share that concern, and could not in good conscience support legislation that could put our men and women in uniform at risk.

Mr. Speaker, establishing a system of military tribunals to bring to trial some of the worst terrorists in the world shouldn't be a partisan matter. I think we can all agree that there is a need for a system that can deliver swift and certain justice to terrorists without risking exposing Americans to improper treatment by those who are our adversaries now or who may become adversaries in the future.

Unfortunately, I think there is too much risk that the bill before the House today will not accomplish that goal and has too many flaws to deserve enactment as it stands. So, I cannot support it.